

11730.3(c) Charges that Taint an Incumbent Union's Subsequent Loss of Majority Support

These charges can be of any kind, other than a charge that affects the circumstances surrounding the petition or the showing of interest or a charge that involves a general refusal to recognize and bargain with the union. These charges raise the issue of a causal relationship between the violations alleged and the subsequent expression of employee disaffection with an incumbent union. A finding of merit to such a charge and of a causal connection between the violations alleged and the employee disaffection would warrant dismissal of a petition that was filed based upon that disaffection. Sec. 11733.2(a)(3).

Example:

An 8(a)(1) statement to a group of represented employees that the employer intends to operate in the future as a nonunion employer may require the dismissal of a petition that follows, if upon a finding of merit to the charge a causal relationship is established between the statement and the subsequent expression of employee disaffection with the incumbent union which is used to support the petition. *Williams Enterprises*, 312 NLRB 937, 939 (1993).

In *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), the Board concluded that a hearing should be held to resolve genuine factual issues as to whether there was a causal nexus between alleged unfair labor practices and the filing of a decertification petition before the dismissal of such a petition.

Accordingly, in such circumstances the Regional Office should conduct a preliminary administrative investigation and proceed as follows:

(a) If no evidence of causal nexus exists, e.g., the showing of interest was obtained prior to the alleged unlawful conduct or the disputed conduct was de minimus or isolated:

- No further consideration should be given to dismissal of the petition
- The decision to treat the charge as blocking the processing of the petition should be reconsidered

(b) If evidence may support a finding of a causal nexus:

- Contact the Division of Operations-Management as to the appropriate action including a possible hearing on the causal nexus issue
- Advise the Office of Representation Appeals of the issue
- Continue to treat the charge as blocking the processing of the petition

11730.4 Decision Whether to Hold Petition in Abeyance

Regardless of whether the charge is already pending at the time of the filing of the petition or is filed after investigation of the petition has already begun, the Regional Director should decide whether the general policy of holding the petition in abeyance should be applied (Sec. 11730) or if one of the exceptions in Sec. 11731 applies. In implementing the blocking charge policy, the Regional Director should assess, throughout the steps of processing the charge and the petition, whether the charge blocks the petition.

If at any time during or after investigation the Regional Director establishes that there was no causal relationship between the unfair labor practice allegations and the decertification petition, the Regional Director should not give further consideration to dismissing the petition and should reconsider whether the charge should continue “blocking” the processing of the petition.

11733.2 Dismissal of Petition Warranted**11733.2(a) Types of Violations Found****11733.2(a)(1) Violations that Affect the Petition or Showing of Interest**

If the Regional Director finds merit to an 8(a)(1) and (2) or 8(b)(1)(A) charge that challenges the circumstances surrounding a petition or the showing of interest submitted in support of a petition (Sec. 11730.3(a)) and the alleged conduct, if proven, directly affects a petition or its showing of interest to an extent that the showing is insufficient, then the petition should be dismissed, subject to reinstatement by the petitioner after final disposition of the C case. Sec. 11733.2(b).

NOTE: Sec. 11028.2 discusses the limited circumstances under which a petition may be dismissed because of conduct relating to the petition or the showing of interest, where such conduct is not the subject of an unfair labor practice charge.

11733.2(a)(2) Violations That Condition or Preclude a Question Concerning Representation

If the Regional Director determines that the meritorious allegations involve violations of Section 8(a)(1), (3), and (5) or 8(b)(3) and the nature of the alleged violations, if proven, would condition or preclude the existence of a question concerning representation, the Regional Director should dismiss the related R case, subject to a request for reinstatement by the petitioner after final disposition of the charge. Sec. 11733.2(b). If meritorious unfair labor practice allegations result in a settlement agreement, including one which contains a nonadmissions clause or one which involves a non-Board settlement resulting in a withdrawal of the charge, pursuant to which settlement agreement the employer is to recognize and bargain with the union, then any RD or other petition that challenges a union's majority status that was filed subsequent to the onset of the alleged unlawful conduct should be dismissed, without provision for reinstatement. *Liberty Fabrics, Inc.*, 327 NLRB 38 (1998); *BOC Group, Inc.*, 323 NLRB 1100 (1997); *Douglas-Randall, Inc.*, 320 NLRB 431 (1995); *Freedom WNLE-TV*, 295 NLRB 634 (1989). A petition filed while a settlement agreement is still in the compliance stage of case processing is also subject to dismissal. Sec. 11730.6.

11733.2(a)(3) Violations That May Affect an Incumbent Union's Subsequent Loss of Majority Support

This section applies to an unfair labor practice charge of any kind other than one that directly attacks the circumstances surrounding the petition or the showing of interest or one that involves a general refusal to recognize and bargain with the union. If the Regional Director finds merit to an unfair labor practice charge of another kind than described in the preceding sentence, and there is specific proof of a causal relationship between the unfair labor practice allegations and ensuing events indicating that the alleged unfair labor practices motivated a subsequent expression of employee disaffection with an incumbent union, then the Regional Director should dismiss a petition that was filed based upon that disaffection. Prior to making such a decision, the Regional Office may be required to conduct a hearing on the causal nexus between the allegedly unlawful conduct and the filing of the petition. See Sec. 11730.3(c). The petition is subject to a

request for reinstatement by the petitioner after final disposition of the C case. Sec. 11733.2(b). *Williams Enterprises*, 312 NLRB 937, 939 (1993).

11733.2(b) Dismissal of Petition

The dismissal letter (Sec. 11102) or order dismissing the petition should set forth the basis for the action, including the reasons that the unfair labor practice findings would affect further processing of the petition. The specific connection between the conduct alleged as unfair labor practices and the petition should be clearly articulated. If more than one basis for dismissal is arguably present, all such bases ordinarily should be stated. For example, conduct, such as direct dealing, which the investigation revealed was causally related to the employee disaffection upon which the petition was based (Sec. 11730.3(c)), may also be conduct the remedy for which—bargaining—precludes a question concerning representation (Sec. 11730.3(b)); the petition should be dismissed for both reasons. The parties should be informed of the right to obtain review by filing a request for such with the Board. Sec. 102.71, Rules and Regulations. Where there is provision for reinstatement of the dismissed petition on application of the petitioner after final disposition of the unfair labor practice case, the dismissal letter or order dismissing the petition should so advise the petitioner. A petition is subject to reinstatement only if the allegations in the unfair labor practice case, which caused the petition to be dismissed, are ultimately found to be without merit. An application for reinstatement under any other circumstances should be denied.

In order to assure notification to the petitioner of the disposition of the unfair labor practice proceeding, the petitioner should be made a party in interest in the unfair labor practice proceeding, with an interest limited solely to receipt of a copy of the order or other document that operates to finally dispose of the proceeding and the dismissal letter or order dismissing the petition should so advise.

11752 Precomplaint Submissions to Division of Operations-Management

- Clearance must be sought before naming an attorney in a complaint as a party respondent and/or agent of the respondent in the commission of unfair labor practices
- In cases in which the alleged unfair labor practices also arguably violate the Occupational Safety and Health Act, the Regional Office should refer to GC Memo 75-29 and GC Memo 79-4 for instructions regarding submission to the Division of Operations-Management
- In cases in which the alleged unfair labor practices also arguably violate the Federal Mine Safety and Health Act of 1977, the Regional Office should refer to GC Memo 80-10 for instructions regarding submission to the Division of Operations-Management
- In cases in which the alleged unfair labor practice charge also involves the Americans with Disabilities Act (ADA), the Regional Office should consult with the Division of Operations-Management
- Misconduct by attorneys or other representatives should, where appropriate, be referred to the Division of Operations-Management. Sec. 102.177(e), Rules and Regulations and OM Memos 97-2 and 01-80
- Certain settlements amounting to less than 80 percent or more than 100 percent of net backpay require clearance from the Division of Operations-Management as follows:
 - All formal and informal Board settlements, Sec. 10592.4 and .8 of the Compliance Manual
 - Non-Board settlements in cases where the Regional Office has decided to issue complaint, Sec. 10592.4 and .8 of the Compliance Manual.

11778 Service of Subpoenas

Sec. 102.113(c), Rules and Regulations requires that subpoenas be served personally, by registered or certified mail, by telegraph, or by delivery at the principal office or business address of the person being served. Also see Sec. 11(4) of the Act. Absent unusual circumstances, such service should be by certified mail or hand delivery with a copy served by regular mail, hand delivery, or by facsimile on any attorney or other representative of the party or witness. If a party or witness is represented by more than one attorney or representative, service on any one of such persons, in addition to the party or witness, satisfies this requirement. However, as a matter of courtesy, an effort should be made to serve all attorneys or representatives of a party or a witness. See Secs. 11842.2-.3 and Sec. 102.113(f), Rules and Regulations.

A claim form for payment of fees and mileage may in appropriate circumstances be enclosed with the subpoena if it is mailed or given to the witness if it is hand delivered.

There is no obligation on the part of the General Counsel (as opposed to outside parties) to tender witness fees at the time of service. In cases of need or emergency, travel accommodations, where authorized by the Regional Director, may be provided in advance. Where necessary, tickets may be obtained in advance through the Agency travel account.

Although no particular period of notice is prescribed, the service and return date for the following types of subpoenas should, where circumstances allow, normally be as follows:

- Investigative Subpoenas – served with a prompt and reasonable return date under all the circumstances.
- Trial Subpoenas – served at least 2 weeks prior to the return date at hearing, but, at any rate in sufficient time to allow 5 days after receipt of the subpoena to petition to revoke the subpoena. See Sec. 11782.4.
- Representation Case Subpoenas – served with a prompt and reasonable hearing return date under all the circumstances.

11780 Witness Fees

Witnesses subpoenaed by a Board agent should be advised that they are entitled to appearance fees and travel expenses, if they make the appropriate claim. Where appropriate, witnesses are also reimbursed for travel, lodging and meal expenses. Since the amounts and terms of these reimbursements may vary from time to time, refer to the latest Administrative Policy Circular or GC Memoranda for current terms and rates.

Witnesses subpoenaed by the Board agent expected to make a claim should complete and sign a claim form promptly after appearance at the proceeding, upon release from the subpoena. Approval of a witness fee claim is the responsibility of the Board agent.

Although private parties may elect to compensate witnesses for lost income while appearing and testifying, there is no like compensation paid by the Government.

If it comes to the Board agent's attention that a private party refuses to pay appropriate fees to an employee witness, the witness and the party should be advised that such failure could violate the Act. *Howard Mfg. Co.*, 231 NLRB 731 (1977).

11782 Petition to Revoke

Secs. 102.31(b) (C cases) and 102.66(c) (R cases), Rules and Regulations set forth procedures regarding petitions to revoke subpoenas. Such rules provide that a subpoenaed person who does not intend to comply with the subpoena, whether ad testificandum or duces tecum, may file a petition to revoke within 5 days after the date the subpoena is received. Although not required by the Rules and Regulations, a copy of the subpoena should be attached to the petition to revoke.

Petitions to revoke may be based on the ground that the subpoena does not relate to any matter under investigation or at issue in a hearing, does not describe the evidence sought with sufficient particularity or if for any other reason sufficient in law the subpoena is otherwise invalid.

11782.1 Filed Prior to Hearing

A petition to revoke filed prior to a hearing is filed with the Regional Director. If the subpoena under attack is an investigative subpoena in a C case, the Regional Director should refer it to the Board for ruling; if it is a hearing subpoena in a C case, the petition should be referred to the Administrative Law Judge with a copy of the subpoena attached. If it is either an investigative or hearing subpoena in an R case, the Regional Director may rule on it or refer it to the hearing officer.

11782.2 Filed at Hearing

A petition to revoke filed at a hearing should be filed with either the Administrative Law Judge or hearing officer, who should then rule on it.

11782.3 Notice of Filing

Notice of the filing of the petition to revoke (which need not have been served on all parties) should be given timely by the Regional Director, Administrative Law Judge, or hearing officer, as the case may be, to the party at whose request the subpoena was issued.

11782.4 Five-Day Period

Section 11(1) of the Act and Secs. 102.31(b) and 102.66(c), Rules and Regulations provide that petitions to revoke shall be filed within 5 days from the service (i.e., receipt) of a subpoena. There is case authority which holds that the 5-day period is a maximum and not a minimum. Absent a showing of prejudice, the subpoenaed party may be required to file and argue its petition to revoke and, if ordered by the Administrative Law Judge or hearing officer, produce subpoenaed testimony and documents at hearing in less than 5 days from receipt of the subpoena. See *Packaging Techniques, Inc.*, 317 NLRB 1252, 1253–1254 (1995) and *NLRB v. Strickland*, 220 F.Supp. 661, 665–666 (D.C.W. Tenn., 1962), affd. 321 F.2d 811, 813 (6th Cir. 1963).

11840–11846 SERVICE, FILING, AND COMMUNICATIONS WITH PARTIES**11840 Service and Filing of Documents**

Secs. 102.111–.114, Rules and Regulations provide comprehensive guidance for the requirements of service and acceptable methods of filing and service of documents. These Sections address the following:

- Sec. 102.111—Time computation
- Sec. 102.112—Date of service; date of filing
- Sec. 102.113—Methods of service of process and papers by the Agency; proof of service
- Sec. 102.114—Filing and service of papers by parties; form of papers; manner and proof of filing or service

The requirements for service of a particular pleading or other document are contained in the Rules and Regulations concerning that pleading or document.

Most documents may also be filed electronically at the Agency’s website. To file documents electronically, proceed to the website at www.nlr.gov and select the E-Gov tab and click on E-Filing. Then select the appropriate office site, i.e., “Board/Office of the Executive Secretary,” “Division of Judges,” “General Counsel’s Office of Appeals,” or “Regional, Subregional & Resident Offices.” Each office site sets forth the documents which can and cannot be filed electronically on that site with instructions how to navigate to the appropriate site and place for document filing. Additionally, each site provides instructions on filing, receipt and service requirements.

11840.1 Computation of Period of Time

Sec. 102.111(a), Rules and Regulations provides that in computing time for filing or service of documents, the time period begins to run the day after the day of the triggering act, event, or default. The last day of the period so computed is included, except when it falls on a weekend or a legal holiday. In such circumstance, the period continues until the official closing time of the receiving office on the next business day. When the period of time is less than 7 days, intermediate weekends and holidays are excluded from the computation.

11840.2 Date of Service and Proof

The date of service shall be the day of personal delivery or receipt of facsimile transmission, where allowed, or day of depositing either in the mail or with a private delivery service, whichever is applicable. Sec. 102.112, Rules and Regulations. Although proof of service is desirable in all cases, failure to furnish such proof does not affect the validity of the service. Sec. 102.114(e), Rules and Regulations. With regard to electronic filings, rules of service are set forth at the appropriate office site on the Agency’s website.

11840.3 Receipt of Documents and Postmark Rule

Sec. 102.111(b), Rules and Regulations sets forth requirements for the timely receipt of documents, including representation petitions and objections to elections, filed with the Agency. The Board will accept as timely documents delivered to the receiving office on or before the official closing time of the last day for filing. Also considered timely are those documents sent to the receiving office that are postmarked at least 1 day prior to the due date. Documents received late that are postmarked on or after the due date are untimely.

Sec. 102.111(c), Rules and Regulations permits a party to file a motion that briefs, answers, motions, and exceptions in ULP proceedings be filed after the filing date in the following limited circumstances:

- Upon good cause shown based on excusable neglect and
- When no undue prejudice would result

The party filing such a motion must strictly adhere to the procedures set forth in Sec. 102.111(c), including submitting sworn affidavits by individuals with personal knowledge of the facts setting forth the extenuating circumstances.

The Board will not permit such a late filing because of miscalculation of a filing date, inattentiveness or carelessness, absent a showing of extenuating circumstances. *Elevator Constructors Local No. 2 (Unitec Elevator Services Co.)*, 337 NLRB 426 (2002).

The appropriate office site on the Agency's website sets forth the rules regarding timely receipt of electronic filings. Electronically filed documents must be received at the appropriate office site by the official closing time of the receiving office on the due date. A failure to timely file a document electronically will not be excused on the basis of the claim that transmission could not be accomplished because the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason. See Sec. 11846.4.

11840.4 Receipt of Documents—Exceptions to Postmark Rule

Sec. 102.111(b), Rules and Regulations lists four exceptions to the above rule regarding postmarked documents. Accordingly, to be timely the following documents must be delivered to the receiving office on or before the official closing time of the last day for filing:

- Charges filed pursuant to Section 10(b) of the Act. See also Sec. 10052.2
- Applications for awards, fees, and other expenses under the Equal Access to Justice Act (EAJA)
- Petitions to revoke subpoenas

- Requests for extensions of time to file any document for which such an extension may be granted

In addition to the requirement that requests for extension of time must be received no later than the due date, Sec. 102.111(b), Rules and Regulations requires that those requests filed within 3 days of the due date “must be grounded on circumstances not reasonably foreseeable in advance.”

11842 Service by the Regional Offices

11842.1 Service of Charge by the Regional Office

The responsibility for proper and timely service of a charge rests with the charging party. Sec. 102.14, Rules and Regulations and Sec. 10012.8. However, the Regional Director will, as a matter of courtesy, cause charges and amended charges to be served by regular mail on the person against whom the charge is made. Sec. 10040.5. When serving a copy of the charge on the charged party by regular mail, the Regional Office should record service by an affidavit of service. This affidavit should be modeled on Form NLRB-877. The affidavit should list the names and addresses to which the charge was mailed, the date of mailing, and the name of the individual performing the mailing. Form NLRB-877 must be modified to state that the service was by regular mail. This affidavit of service should be placed in the investigative file so that the Board agent assigned to the investigation can ensure that the form has been completed. The affidavit of service could be used, if necessary and upon proper authentication, to prove service of the charge.

11842.2 Service of Other Formal Documents

Complaints, compliance specifications, amendments to either, notices of hearing in C cases, final Board Orders, Administrative Law Judge decisions, and subpoenas must be served personally, by registered or certified mail, by telegraph, or by leaving a copy at the principal office or place of business of the person on whom service is sought. Sec. 102.113(a)–(c), Rules and Regulations.

To establish necessary proof of service, return receipts must be requested when complaints, compliance specifications, and amendments thereto are served on respondents by certified mail. Subpoenas served by certified mail should also require a return receipt. Although return receipts are a practical necessity in the above circumstances, the rules do not require that return receipts be obtained. Accordingly, to save expense, return receipts should not be requested for certified mail delivery of complaints, compliance specifications, and amendments thereto to charging parties, parties to the contract, and parties of interest. Attorneys or representatives should be served by regular mail. Other documents may be served by any of the foregoing methods, as well as by regular mail or private delivery service, or, with the permission of the person receiving service, by facsimile transmission. Sec. 102.113(d), Rules and Regulations.

Note: If a party is represented by an attorney or other representative, the instructions regarding service set forth in Sec. 11842.3 must also be followed.

11842.3 Service on Attorney or Other Representative

If a party's or person's representative is an attorney, all documents and correspondence including e-mail must be addressed to and served exclusively on the attorney unless:

- Direct contact with a party or person is authorized by the attorney,¹
- Service of documents and correspondence on the party has been authorized by the attorney, for example by checking the appropriate box on a Notice of Appearance, Form NLRB-4701 (See Sec. 10058.1(b)), or
- One of the exceptions set forth below in subparagraphs (a), (b), or (c) applies

If a party's or person's representative is not an attorney, all documents and correspondence including e-mail should be addressed and served on the representative and copies may also be sent to the party or person unless one of the situations set forth below in subparagraphs (a), (b), or (d) applies.

For oral and e-mail communications with parties, see Sec. 11844.

(a) *Service on Party or Person with Copy to Attorney or Representative:* The following documents and/or correspondence should be addressed to and served on the appropriate party(ies) or person(s) with a copy(ies) to their attorney(s) or representative(s) and, if appropriate, with copies to other parties and their attorneys or representatives:

- Charges, amended charges, and standard service letters (see Sec. 10040)
- Petitions, amended petitions, and standard service letters (see Sec. 11009)
- Correspondence confirming agreed upon election arrangements, election notices, and letters requesting and supplying *Excelsior* lists accompanied by a copy of the approved consent or stipulated election agreement
- Objections and standard service letters (see Sec. 11392.9)
- Subpoenas, related forms and instructions, and standard cover letters which do not convey substantive information or invite a response. However, if a party or person is represented by an attorney, written communications conveying substantive information or inviting a response which may accompany subpoenas must be addressed to and served exclusively on the attorney.

¹ For example, after the requirements of compliance have been agreed upon and the charged party/respondent through its attorney has advised the Regional Office of its intention to comply, documents necessary to accomplish compliance may, with the consent of the attorney, be sent directly to the party with copies to the attorney. Such documents may include notices for posting pursuant to a settlement agreement, an ALJ decision, or a Board Order; requests for a certification of posting; and instructions concerning the details of compliance.

(b) *Service on All Parties, Persons, Attorneys or Representatives:* The following documents should be served on all parties and persons and their attorneys or representatives:

- Complaints, compliance specifications, amendments to either, notices of hearing, final Board Orders and Administrative Law Judge decisions in unfair labor practice cases and in connection with 10(k) hearings, and cover letters which do not invite a response. However, if a party or person is represented by an attorney, written communications conveying substantive information or inviting a response which may accompany any of these documents must be addressed to and served exclusively on the attorney.
- Notices of hearing, decisions, orders, reports, supplemental decisions, and certifications in representation cases

(c) *Service on Attorney with Copy to Party:* The following documents and/or correspondence should be addressed to and served on the attorney(s) of the appropriate party(ies) with a copy(ies) to such party(ies) and with copies to other parties and their attorneys or representatives:

- Dismissal and withdrawal letters
- Final *Collyer, Dubo*, and administrative deferral letters
- Closing compliance letters

(d) *Service on Party Represented by a Non Attorney:* The following documents and/or correspondence should be addressed to and served on the appropriate party(ies) with a copy(ies) to such party's(ies') representative and with copies to other parties and their attorneys or representatives:

- Dismissal and withdrawal letters
- Final *Collyer, Dubo*, and administrative deferral letters
- Closing compliance letters

11842.4 Service on Multiple Attorneys or Other Representatives

If a party or person is represented by more than one attorney or representative, service on any one of such attorneys or representatives in addition to the party or person, where appropriate, satisfies the requirements of Sec. 102.113(f). However, as a matter of courtesy, an effort should be made to serve all attorneys or representatives of a party or person.

11844 Oral and Electronic Communications with Parties or Persons

If a party or person is represented by an attorney, all oral and electronic communications should be directed exclusively to the attorney and copies of electronic correspondence should not be sent to the party or person unless direct contact is authorized by the attorney. If a party's or person's representative is not an attorney, all oral and electronic communications should be directed to the representative, however, copies of electronic correspondence may also be sent to the party or person. For service of documents and written communications see Sec. 11842.3. For more specific guidance regarding communications with attorney and non attorney representatives in unfair labor practice cases, see Sec. 10058.

11846 Filing and Service by Parties

Filing by hand delivery, by registered or certified mail, or by private delivery service satisfies the requirements for filing with the Board, the General Counsel, Regional Offices, or Administrative Law Judges. Sec. 102.114, Rules and Regulations. In addition, filing electronically or by facsimile transmission may be used in certain circumstances, as set forth below.

11846.1 Facsimile Filing Permitted

Parties may file unfair labor practice charges, representation petitions, objections to elections, and requests for extension of time by facsimile transmission, if transmitted to the facsimile machine of the appropriate office of the Agency. Receipt of such facsimile transmission by the Agency constitutes filing. Sec. 102.114(f), Rules and Regulations.

11846.2 Facsimile Filing Permitted only with Consent

The filing by facsimile transmission of documents other than those set forth above, except those specifically prohibited as set forth in Sec. 11846.3, will be accepted by the appropriate office of the Agency, only with the advance permission of the receiving office. Sec. 102.114(g), Rules and Regulations.

11846.3 Facsimile Filing Prohibited

Sec. 102.114(g), Rules and Regulations prohibits the filing by facsimile of a showing of interest, requests for review, and appeals from dismissal of petitions in representation cases; appeals from dismissal of unfair labor practice charges; objections to settlements; answers to complaints; exceptions, cross-exceptions and briefs; Equal Access to Justice Act (EAJA) applications and a variety of motions. See Sec. 102.114(g) for a complete list of exclusions from filing by facsimile transmission.

11846.4 Electronic Filing and Service

Sec. 102.114(i), Rules and Regulations provides that certain documents may be filed with the Agency electronically notwithstanding any contrary provisions elsewhere in the Board's Rules and Regulations. The rules governing such filings are set forth at the Agency's website at www.nlrb.gov.

(a) *Electronic Filings with the Agency:* As noted in Sec. 11840, most documents may be filed electronically at the Agency's website. To file documents electronically, proceed to the website at www.nlr.gov and select the E-Gov tab and click on E-Filing. Then select the appropriate office site, i.e., "Board/Office of the Executive Secretary," "Division of Judges," "General Counsel's Office of Appeals," or "Regional, Subregional, & Resident Offices." Each office site sets forth the documents which can and cannot be filed on that site with instructions how to navigate to the appropriate site and place for document filing. Additionally, each site provides instructions on filing, receipt and service requirements.

(b) *Service on the Regional Director, Hearing Officer or Counsel for the General Counsel:* The General Counsel's policy outlined in OM Memo 07-07 (Revised) dated November 15, 2006, provides that documents may be served on a Regional Director, Hearing Officer, or Counsel for the General Counsel by utilizing the E-Filing form on the Agency's website. However, service on other parties to the case must still be accomplished by means allowed under the Board's Rules and Regulations. See Sec. 102.114(i), Rules and Regulations and Sec. 11846.5.

(c) *Receipt of Electronically Filed Documents:* Electronically filed documents must be received at the appropriate office site by the official closing time of the receiving office on the due date. A failure to timely file a document electronically will not be excused on the basis of the claim that transmission could not be accomplished because the receiving machine was offline or unavailable, the sending machine malfunctioned, or for any other electronic-related reason. See Sec. 11840.3.

(d) *Electronic Filing Prohibited:* The following documents may not be filed electronically with any Agency office:

- Unfair Labor Practice Charges
- Representation Petitions
- Petitions for Advisory Opinions

11846.5 Service by Party on Other Parties

Where service of documents by a party on other parties is required, such service may be made personally or by registered mail, certified mail, regular mail, or by private delivery service. Service of documents by a party on other parties by any other means, including facsimile or electronic transmission, is permitted only with the consent of the party being served. In general, service on all parties shall be in the same manner as that utilized in filing the document with the Board or in a more expeditious manner. See Secs. 102.114(a) and (h), and (i) Rules and Regulations for specific applications.